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47	3.3.1
50	4.3.1
53	4.1

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80	3.1.2
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103	1.3.2
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118	1.1.3
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119	2.1.1.3

122	2.1.3
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Abstract
The Duty of Arbitrator to Apply the Substantive Law to the
Subject-matter of the Arbitrated Dispute under the Jordanian
Law
Comparative Study

Moh'd Abdel-Aziz Khleifat

Mu'tah University, 2009

This dissertation deals with the duty of an arbitrator to apply the substantive law to the subject matter of the arbitrated dispute in Jordanian and comparative law. It defines the concept of the substantive applicable law and the sources of the rules of law which are to be applied to the subject matter of arbitration.

This study examines also the freedom of the parties and arbitrators in respect of the choice of substantive law and the limits to such freedom. We have also examined the cases of the arbitrator's deviation from the agreed upon rules of law. We emphasize mainly on the application of Article 49 (a) (4) of the Jordanian Arbitration Law by the Jordanian courts.

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Arbitration

Dispute

Arbitrator(s)

Arbitration

- Arbitration Agreement

Submission Agreement-^(3)

Clause

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1. Arbitration has been defined as a process whereby parties voluntarily agree to refer their disputes to an impartial third person or persons selected by the parties for a decision that is final and binding on the parties. See CINDY G. BUYS, 2005, The Arbitrator's Duty To Respect The Parties Choice of Law in Commercial Arbitration, FP-BUYS, p.59.

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⁽¹⁾ Judicial scrutiny

Arbitral Tribunal

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Governing Law

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International Arbitration

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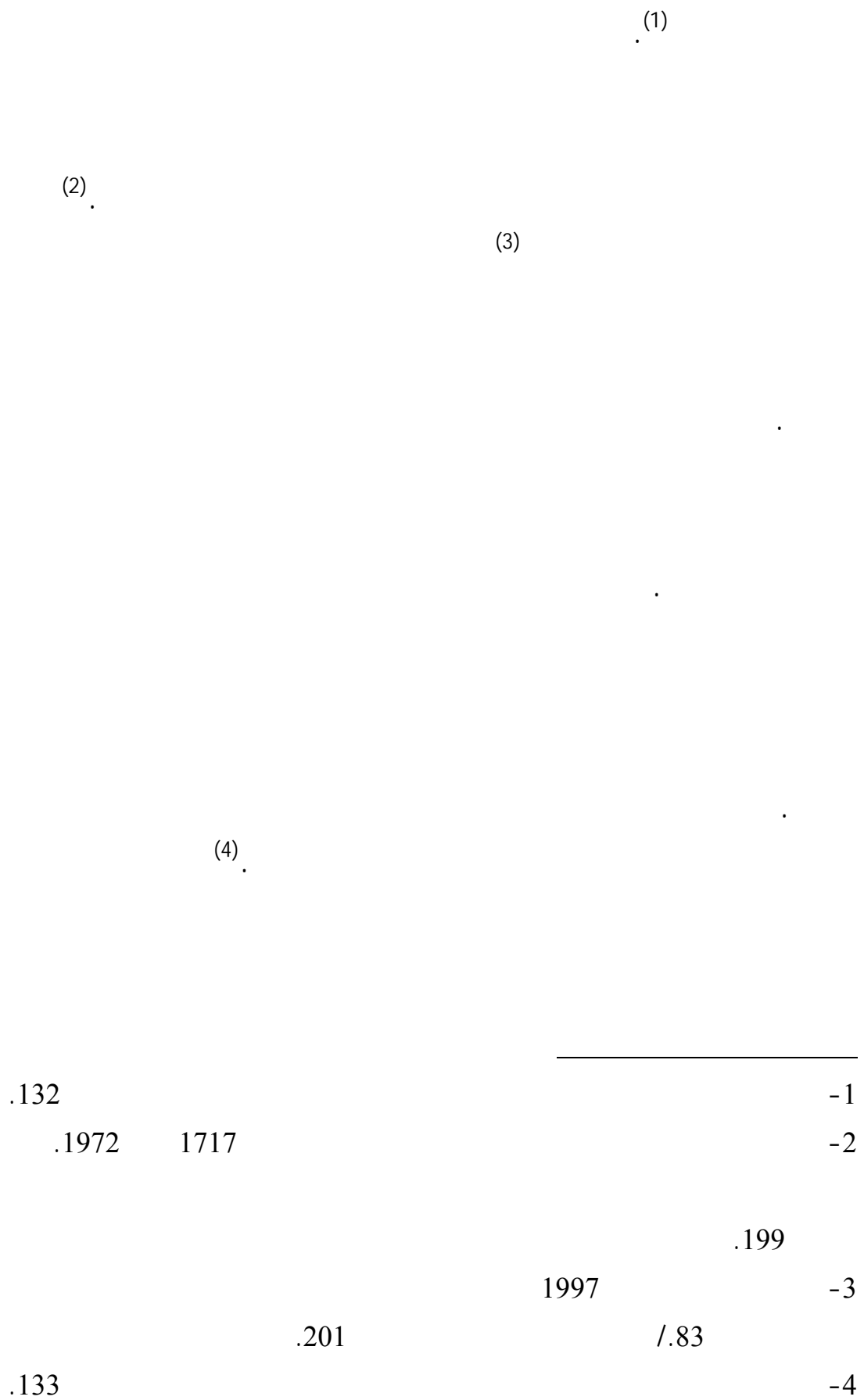
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conflict of law

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"The arbitral tribunal shall decide
the dispute in accordance with such rules of law as are chosen by the
parties as applicable to the substance of the dispute"

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– -International Trade Law -1

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Giuditta Cordero MOSS, 2008, International Arbitration and the Quest
for the Applicable law, Global Jurist, vol,8, issue3,Article 2,p.4
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Professional Law

International Merchants Community

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- 2- " Therefore, arbitrators', courts and legislatures should adopt and follow rules that require respect for party autonomy in domestic commercial arbitration, just as is done in international commercial arbitration". Buys, p.96.

Provisions

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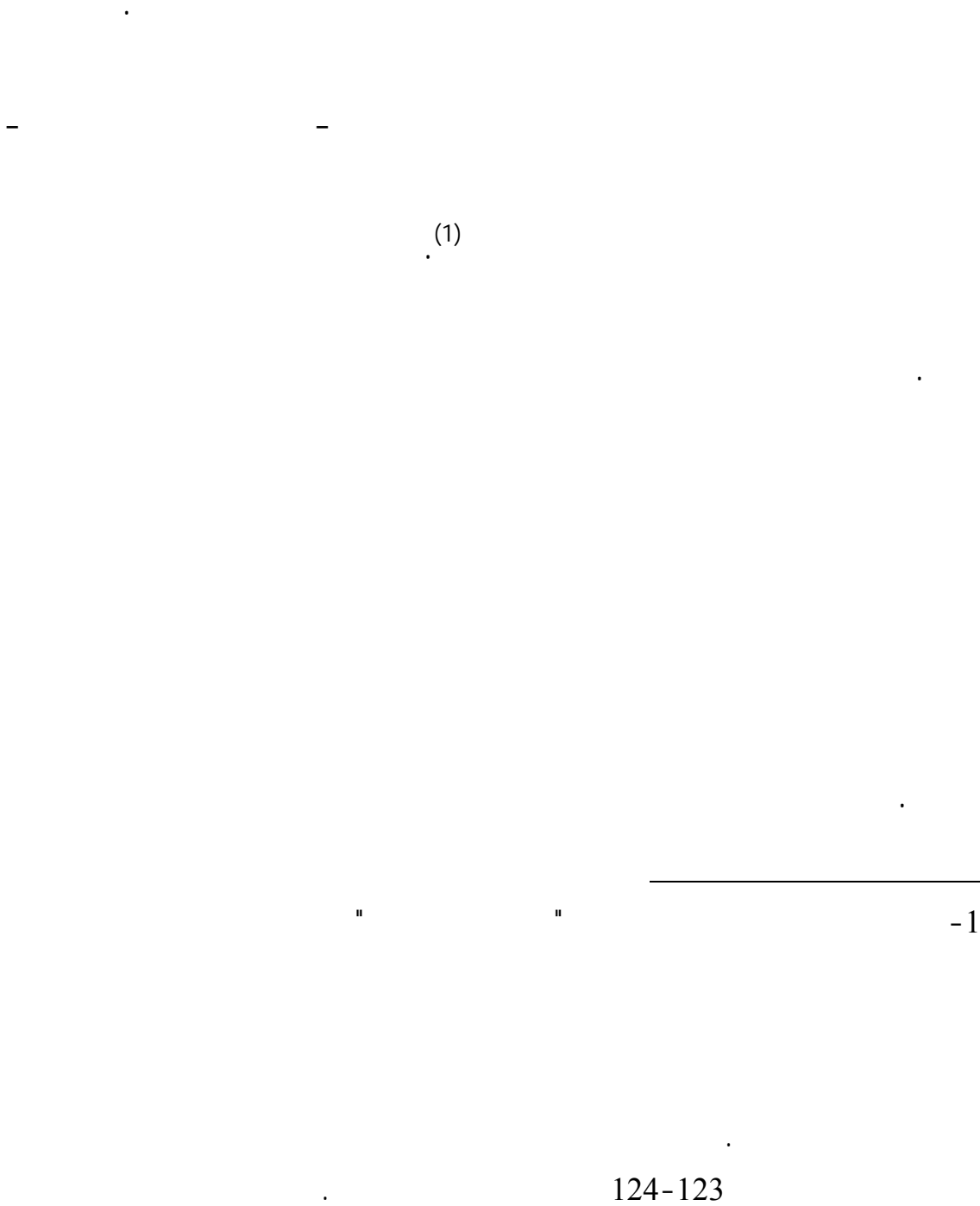
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"New York Convention on the Recognition and Enforcement of 1958
Foreign Arbitral Awards"

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Haddad, Hamzeh, 1989, Enforcement of Foreign :
Judgment and award in Jordan and Iraq, A lecture addressed to the
IBA conference of Bahrain,(5-8/3/1989). www.aiadr.com

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non-recognition

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Conflict of Laws Rules

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$$\begin{array}{r} \hline .242 \quad 190 \\ : \quad -1 \\ -2 \end{array}$$

$$\begin{array}{r} .696 \quad .697 \quad -695 \\ : \quad -3 \end{array}$$

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first instance court
the subject

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matter of dispute
second degree of litigation

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usual methods of recourse

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" 48

manner of

"...

contestation

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(880-798)

Third	Re-trial	Appeal
.Cassation	Opposition	Party
205		242
532		186

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.action for nullity of the arbitral award

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Court of Appeal
review for arbitral awards

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incorrect interpretation
error of facts

Setting aside

" (3)

157

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2003/1919

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Scrutiny

" 1952 _____ -1

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1968/9/7 = 1964/64 ."
" .705 1968

1968/3/3 1968/15 ."
" .275 1968

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1971 1971/1/12 1970/247
-49 54-52 .171 -2
.54-52 46-39 52

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.www.aiadr.com 2007/4/29

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.566 318

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"If the arbitral tribunal excluded
the application of the law agreed upon by the parties to govern the subject-
(1) 4/ /49 matter of the dispute"

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" "

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/1/53

Unictal Arbitration Rules)

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49 (4) (1)

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.177	
	-2
/ .607	
.496	

1.1.3

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: 1.1.1.3

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24

vacating 4/ /49
disregard of law
applicable to the substance of the dispute
.procedural rules

.580 324 -1
" -2
2/38 2/39 /36
2/39

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: 2.1.1.3

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583-581 325

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4/ /49

contract provisions "

(1) 3/36

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(3) /36

67-66 43 : =

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.586-585 326 -2

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Arab (APC)

ATA " "

Potash Company

Industry and Trading Inc Construction

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2.1.3

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1998/5/2

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(Dike19)(19)

1998/3/16

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1998/12/8

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2003/71

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) () 2000/3/26 -
ATA ()
2000/3/29
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(67)
APC () (1)
) 2000/9/3
(19) ATA ()
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ATA () 2000/9/6
2000/9/10 APC ()
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ATA APC 3/67 -1
"disputes should be finally settled by
the 3/4 " Arbitration
terms of reference
the award shall be final and binding and not subject to "
."appeal

(ATA) :
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 (APC) (19) -1
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 ... (3979194.22) -1
 (1/10) 1998 14
 ...(APC)
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 (ATA) 3/10
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 ATA "... (ATA) -2
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(9) ...(8) ...(7) ...(6) ...(5) ...(4) ...(3) ...(2) ...(1)

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⁽²⁾ (786)

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2001 31

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2004-1-16

2004/1/16

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2004/5/4

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161 160

(APC)

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2009/3/25	2008/117	2009/4/20
	2009/6/28	2009/39
	.2009/5/31	2009/18

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 "annulment action " 49 48
 "an appeal "
 procedural "
 (1)"substance"
 "legality
 " "
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Prohibition

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2008	-1
.2009/2008	
.2009/2008	-2

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() :

"falls exclusively within the
powers of the arbitral tribunal and no court should re-examine the
substance"

the "

(2) "parties wells" "expectations of the parties

() "exclusion" " :

"the non-application of the

" agreed applicable law to the merits of the dispute"

(3) misinterpretations" " misapplication "

49

Law

APC ATA

specific provisions

4/ /49 :

"error of law"

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(222-169) -1

.2009/2008 -2

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. 232 177

1994 27

APC

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error of law error of facts :
(misapplication or misinterpretations of law)

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2004/54

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" " :

exclusion " "law

"the failure to apply the provisions of this law

"

(3) :

"There ought to be very clear distinction between excluding the application of the law and not applying a provision of the law that is not favourable to one of the law as applied by the Arbitral Tribunal is not outside the boundaries at the applicable law in this case".

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"the intention of the legislator is

not to be judged by what Is in its mind, but by the expression of that

mind in the legislation itself "

215 2/214 2

.2009/2008

101 64

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"APC" " "

(scrutinize)

"... (examination of the facts and evidence)
as a Court of) "
(1) (Facts

1953 18 -1

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.30-27 ATA
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.143-142 .

)19 (ATA)
 .(joint liability
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 ."... 2001 31
 :
 (scrutinizing the case file and evidence)
 re-) (re-evaluating the facts)
 .⁽¹⁾ (interpreting the law
 re-examined the) :
 Gibb (facts
 .Gibb ATA

court of facts for the second instance and not)
 (the court supervising the procedural legality of arbitral awards
 .⁽²⁾4/ /49
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 (overruled)

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. 2009/2008	- 2

49 (1) 2006/201

formal nature

ATA :

(preliminary decision)

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" 2004/1/16

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the power of appellate court" a second)

49 48 (court of facts"
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Manifest Disregard of Law

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manifest disregard "

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"An error of fact or an error of Law(Misapplication or Misinterpretation of Law) is not aground for annulment under Article 49(a)(4) regardless of whether that error is (manifest) or not.⁽¹⁾

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Federal Arbitration Act (FAA)

(reaffirms)

FAA

review

"to

.annul arbitral awards that reflect manifest disregard of the law"

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"when parties agree to arbitrate their disputes they opt out of the court system, and when one of them challenges the resulting arbitration award, he perforce does so not on the ground that the arbitrators made a mistake, but that they violated the agreement to arbitrate, as by corruption, evident partiality, exceeding their powers, etc, conduct to which the parties did not consent when they included an arbitration agreement in their contract.

That is why in the typical arbitration ... the issue for the court is not whether the arbitrators had failed to interpret the contract at all, for only then were they exceeding the authority granted to them by the contract's arbitration clause.

Like the seventh circuit, we view the "manifest disregard" doctrine and the FAA itself as a mechanism to enforce the parties agreement to arbitrate rather than as judicial review of the arbitrators decision. We must therefore continue to bear the responsibility to vacate arbitration awards in rare instances in which the arbitrator knew of the relevant legal principle, appreciated that this principle controlled the outcome of the disputed issue, and nonetheless willfully flouted governing law by refusing to apply it.

At that point the arbitrators have failed to interpret the contract at all, for the parties do not agree in advance to submit to arbitration that is carried out in manifest disregard of the law. Put another way, the arbitrators have thereby exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made⁽¹⁾.

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1. James E. Berger, Christopher F. Dugan And Charlene Sun, December 2008, Second Circuit Reaffirms Manifest Disregard Standard of Review for Arbitral Awards, Paul Hasting Publishing, p.2-3.

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lack of the appellate review mechanisms

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"We want to have arbitration law that minimizes court intervention and thus reduces the heavy burden of litigation that is put upon the shoulders of our courts we do not want arbitration law that encourages arbitration in one hand and takes the disputes back to the courts for review in the other hand. The parties are not compelled to go to arbitration but

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when choosing to arbitrate they must bear the risks of the arbitral award not being subject to appeal⁽¹⁾ ".

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<http://www.lac.comjo> :

.http://www.lac.com.jo : .2003/10/4
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<http://www.4shared.com/get/57113408/31e6c78a/----->.html

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- CINDY G. BUYS, 2005, **The Arbitrator's Duty To Respect The Parties Choice of Law in Commercial Arbitration**, FP-BUYS.
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